

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTINE WHALEN, et al.,

Plaintiffs,

v.

ALBERTSONS COMPANIES INC., et al.,

Defendants.

Case No. [23-cv-00459-VC](#)

**ORDER REGARDING HEARING ON
MOTION TO DISMISS AND MOTION
FOR A PRELIMINARY INJUNCTION**

At tomorrow's hearing, the parties should be prepared to discuss the following issues:

1. On the specific facts of this case, the defendants' ripeness argument may have merit, but it could depend on whether there will be a meaningful opportunity for judicial review after the contours of the merger agreement are finalized. Can the parties provide more specific information about how much time will pass between finalization (following regulatory review) and consummation of the agreement? Can the defendants agree to a particular time period in advance?


2. On the merits, the defendants appear to be arguing that the proposed merger must be analyzed by examining thousands upon thousands of individual geographic grocery store markets. If that is correct, how would a plaintiff (whether a private or government plaintiff) be able to obtain an injunction against a merger like this? Must the plaintiff establish anticompetitive effects in each of the thousands of markets? A majority of those markets? Something less than a majority? Why, in the context of a nationwide merger, is it not appropriate to analyze the net effect on grocery store competition throughout the country?

3. Procedurally, if a private plaintiff is attempting to preliminarily enjoin a proposed

nationwide merger like this, must they do so in a proposed class action where a nationwide class has been provisionally certified? *See, e.g., Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1201–05 (N.D. Cal. 2017). And if the plaintiff is not representing a nationwide class, are they limited to seeking an injunction against the portion of the merger that affects their own geographic market?

IT IS SO ORDERED.

Dated: July 26, 2023



VINCE CHHABRIA
United States District Judge